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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

STEVEN M. COLOSIMO and
NATHANIEL A. PORTEOUS,
individuals, on behalf of themselves and all
other similarly situated employees,

Plaintiffs,

vs.

PRINCE TELECOM, LLC, a Delaware
limited liability company; and DOES 1
through 10, inclusive,

Defendants.

CASE NO.: 2:19-cv00647

**MOTION TO AMEND AND
REMAND**

COME NOW Plaintiffs, STEVEN M. COLOSIMO and NATHANIEL A. PORTEOUS, individuals, on behalf of themselves and all other similarly situated employees, by and through their counsel, MADDOX | ISAACSON | CISNEROS LLP, and hereby present this Motion to Amend and Remand.

This Motion is based on the following Memorandum of Points and Authorities, all pleadings and papers on file herein, and on such oral argument and documentary evidence that may be presented at any oral hearing on this Motion.

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MEMORANDUM OF POINTS AND AUTHORITIES

In this class action, Plaintiffs have asserted wage and hour violations under federal and Nevada law. On February 28, 2019, Plaintiffs filed this action in the Eighth Judicial District, Clark County, Nevada, and Defendant then removed to this Court on April 15, 2019. Therein Defendants alleged that pursuant to 28 U.S.C. §§ 1441(a) and 1446, the Court had original jurisdiction over the federal claims raised under 28 U.S.C. § 1331 and supplemental jurisdiction over the state law claims under 28 U.S.C. § 1367. The alleged basis of federal jurisdiction was that Plaintiffs had pled federal claims under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201 et. seq.

Plaintiffs hereby seek leave to amend their Complaint to remove the FLSA claims, and to remand the action to state court, pursuant to 28 U.S.C. § 1447.

I. LEGAL STANDARD

Fed. R. Civ. P. 15(a)(2) provides that “[t]he court should freely give leave [to amend] when justice so requires.” The Supreme Court has interpreted Rule 15(a)(2) and confirmed the liberal standard district courts must apply when granting such leave:

In the absence of any apparent or declared reason—such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of the amendment, etc.—the leave sought should, as the rules require, be ‘freely given.’

Foman v. Davis, 371 U.S. 178, 182, 83 S.Ct. 227 (1962).

A complaint filed in state court may be removed to federal court if the federal court would have had original jurisdiction over the action had it been brought in federal court in the first place. 28 U.S.C. § 1441(a). However, “The removal statute is strictly construed against removal jurisdiction.” *Provincial Gov’t of Marinduque v. Placer Dome, Inc.*, 582 F.3d 1083, 1087 (9th Cir.2009). “The defendant bears the burden of establishing that removal is proper.” *Id.* “If at any time before final judgment it

appears that the district court lacks subject matter jurisdiction, the case shall be remanded.” 28 U.S.C. § 1447(c).

II. LEGAL ARGUMENT

Six of the eight claims brought by Plaintiffs were made under Nevada state law, as follows:

- 1) Failure to pay minimum wages in violation of the Nevada Constitution;
- 2) Failure to compensate for all hours worked in violation of NRS §§ 608.140 and 608.016;
- 3) Failure to pay overtime in violation of NRS §§ 608.140 and 608.018;
- 4) Failure to timely pay all wages due and owing in violation of NRS §§ 608.140 and 608.020-050;
- 5) Failure to provide meal periods in violation of NRS §§ 608.140 and 608.019; and
- 6) Failure to provide rest periods in violation of NRS §§ 608.140 and 608.019.

Two claims made under federal law, namely:

- 1) Failure to pay wages for all hours worked in violation of the Fair Labor Standards Act, 29 U.S.C. § 201, et. seq.; and
- 2) Failure to pay overtime in violation of the Fair Labor Standards Act, 29 U.S.C. § 207.

Plaintiffs hereby move to amend, removing the two FLSA claims. A proposed First Amended Complaint is attached hereto as **Exhibit 1**. Plaintiffs further submit that the Court should deem the First Amended Complaint admitted, then remand to state court, for the reason that without the federal claims, the Court lacks jurisdiction under 28 U.S.C. § 1447 (c).

Defendant will suffer no prejudice through this Motion. No discovery has been conducted, and there is only one motion pending in this action – Defendant’s Motion to Dismiss (ECF No. 8). Because there has been no discovery and no ruling

on the motion to dismiss, Plaintiffs believe that it would serve judicial economy to remand this matter to state court. Plaintiffs have met and conferred with Defendant's counsel concerning this matter, without success.

III. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request and Order deeming the proposed First Amended Complaint as admitted, then remanding this action to state court, pursuant to 28 U.S.C. § 1447 (c).

DATED this 15 day of May, 2019.

MADDOX | ISAACSON | CISNEROS LLP

By: 

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CERTIFICATE OF SERVICE

I am a resident of the State of Nevada, over the age of eighteen years, and not a party to the within action. My business address is 11920 Southern Highlands Parkway, Suite 100, Las Vegas, Nevada 89141.

Pursuant to FRCP 5(b)(3) and LR 5-1, I hereby certify that on this 15th day of May, 2019, I served a true and correct copy of the above document, entitled **MOTION TO AMEND AND REMAND**, via the Court's electronic filing/service system (CM/ECF) to all parties on the current service list.

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I declare under penalty of perjury that the foregoing is true and correct.
Executed on May 15, 2019, at Las Vegas, Nevada.

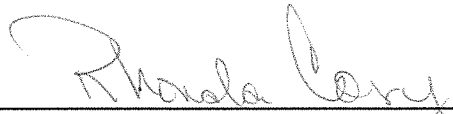

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EXHIBIT INDEX

Exhibit 1 - 1st Amended Collective and Class
Action Complaint